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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

October Term, 1947

No. 170

THOMAS BULLITT DIXON,
Petitioner Pro Se,

vs.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY; WESTERN ELECTRIC COMPANY, INCORPORATED; PHILIPP, SAWYER, RICE & KENNEDY; JAMES J. KENNEDY, JR.; FISH, RICHARDSON & NEAVE; HENRY R. ASHTON; JOHN McGLONE,
Respondents.

Civil Action File No. 20-255 To set aside as null and void Decree in E-65-141 and have new trial ordered on ground Decree was "procured to be made" as result of Fraud.

MEMORANDUM FOR PETITIONER THOMAS BULLITT DIXON IN OPPOSITION TO BRIEF DATED AUGUST 19, 1947, ON BEHALF OF RESPONDENTS, AMERICAN TELEPHONE AND TELEGRAPH COMPANY, WESTERN ELECTRIC COMPANY, INCORPORATED, FISH, RICHARDSON & NEAVE, HENRY R. ASHTON AND JOHN McGLONE, OPPOSING GRANTING OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT; ALSO IN OPPOSITION TO MEMORANDUM FOR RESPONDENTS, PHILIPP, SAWYER, RICE & KENNEDY, AND JAMES J. KENNEDY, JR., OPPOSING THE GRANTING OF SAID WRIT AND LIKEWISE DATED AUGUST 19, 1947.

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The untoward state of the health of the Petitioner referred to in the footnote to his Brief in Support of his Petition for a Writ of Certiorari (p. 5 thereof) has made it impracticable for him to undertake a formal Reply Brief and Memorandum in Response to the said Brief and Memorandum for Respondents, but in view of the ATTEMPTS

TO DECEIVE AND MISLEAD the Supreme Court of the United States Petitioner nevertheless feels it incumbent upon him, to particularly call the Court's attention to certain aspects of the case.

Petitioner, who is not a lawyer, has stated in his Petition and Supporting Brief, in accordance with his understanding, the principal facts in the instant case and the law in support of them, upon which he relies, and has not felt any necessity to be apparent why he should undertake a formal reply to the said Brief and Memorandum of Respondents which constitute in essence and substance attempts to make excuses for the facts upon which the Petitioner's charges of FRAUD are based. They have completely failed to give any satisfactory excuse or explanation for the failure of plaintiff's attorney in the prior suit to present to the Court the evidence upon which the possible success of plaintiff's suit depended, but instead attempt to mislead this Court by sundry statements, and it is, among other things, to call the Court's attention to certain of these statements that this Memorandum is now submitted.

Among other things, Respondents state that THERE WAS NEVER ANY COMMERCIAL USE OF THE INVENTION IN SUIT. THIS MONSTROUSLY FALSE STATEMENT IS SHOWN TO BE UNQUALIFIEDLY FALSE by the letter of J. Wiseman, Plaintiff's Exhibit 1, annexed to his Affidavit of December 3, 1943, and referred to on pages 24 and 25 of Petitioner's Supporting Brief herein. Paragraph 4 of this J. Wiseman letter, dated June 18, 1907, referring to the operation of the invention in suit of the Patent in suit reads in part as follows:

> "As to the practicability of the system, that was demonstrated in August last, when we did regular business over the cable from 3 to 6 p. m. for three or four days at a speed of about 90 or 95 letters per

minute with the cable duplex, and the new system then was only in its infancy. * * * "

Well knowing the great importance to Petitioner's case of the evidence supplied by this J. Wiseman letter, after the manner of the devilfish in first exuding its substance of inky blackness so as to darken the water to the better enable it to entrap its prey these Respondents first deposit their inky black exudation of FALSEHOOD into the waters of TRUTH to the end of obscuring any clear view of Petitioner's case and thus deceiving and misleading the COURT.

Respecting the charges of laches the cases cited by Respondents' Brief respecting the issue of laches support Petitioner's contention to the effect that the authorities concur in the view that as to laches each case must be judged in accordance with the circumstances affecting it and not in accordance with any general rule; and Petitioner, accordingly, again respectfully calls the attention of the Court to his statements to the effect that the circumstances of the instant case in no way lend support to the charge that Petitioner has been guilty of laches; and moreover the attention of the Court is called to the fact that while the opinion of the Circuit Court of Appeals upon which its Judgment in this case rests is particularly based on the alleged laches of plaintiff during the period 1937 to 1940, the opinion of the District Court of August 4, 1944, which this decision of the Circuit Court of Appeals affirms, does not even mention laches as the ground or as even one of the grounds upon which the Decision of the District Court is based.

Notwithstanding that in his Opinion of August 4, 1944, upon the basis of which Plaintiff's Re-amended Complaint was dismissed, the Trial Judge failed to recognize the exist-

ence of any justifiable inference of FRAUD as shown by the averments of Plaintiff and the record of the case this contrasts strangely and farreachingly with the statement made by the Court in its decision of September 3, 1943 (R. 52-54), where the Court says:

* * * * * * * * * *

"* * * The action being brought to set aside a previous adjudication on the ground of fraud, plaintiff is bound to state with particularity the circumstances constituting such fraud. The defendants contend he has not done so. I think the new allegations in the complaint, inartificially perhaps, but sufficiently, set forth those circumstances.

It will be remembered that the judgment in the former action upheld plaintiff's patent but found no infringement. The gist of the present action is that there was a corrupt and fraudulent bargain between plaintiff's then attorneys and the defendants and their attorneys, all of whom are defendants here. Plaintiff admits he does not know the precise terms of that bargain, but alleges generally, as he may, that it was entered into to prevent him from exhibiting his full case to the courts and to conceal and suppress vital and controlling facts important to his case, whereby defendants' counsel might and did grossly misrepresent his case without contradiction by his counsel and to plaintiff's disadvantage, and whereby a real contest was simulated, but a sham one actually presented, so that plaintiff's cause would be and was lost. To accomplish this, it is alleged, the facts concealed, pursuant to such bargain, were those showing commercial use of the invention in suit, proof showing the nature and elements of sub-combinations comprised in the concrete structure defined in the claims in his patent, thus eliminating proof as to what constitutes radiant energy or radiation, the feature upon which lack of infringement seemed to turn in the decision previ-

ously made. This concealment, it is alleged, deceived and misled the courts as to the true facts underlying plaintiff's case and rendered impossible a consideration of the real merits, and, had there been no concealment or suppression, infringement would have been established. It is also alleged that, carrying out the bargain and fraud, no objections or exceptions were taken during the trial; no rehearings were asked for either in the District Court or in the Circuit Court of Appeals; that the defendants and their attorneys misrepresented the facts although they had 'inside information' respecting the commercial development and use of plaintiff's invention; and that a stipulation was entered into which further accomplished such concealment and suppression.

An order may be settled on notice denying the present motions and providing for the service of answers in twenty days.

Dated: N. Y. September 3, 1943.

JOHN BRIGHT
U. S. D. J.

U. S. District Court
Filed: Sept. 13, 1943.
S. D. of N. Y."

Notwithstanding this very forceful statement of the District Court respecting the circumstances of Plaintiff's case constituting the FRAUD upon which Plaintiff's case is based the District Court in its Opinion of August 4, 1944, has held in effect that the inference of FRAUD is not justified because this inference is equally balanced by the legal presumption of innocence. In his "Points" Plaintiff has urged, Point No. 10.

(R. 298):

10. Considering the facts of the case in relationship to each other the Court erred in holding in effect, that the inference of fraud was equally balanced by the legal presumption of innocence.

Petitioner respectfully submits that the statements on pages 28 and 29 of his Supporting Brief so fully support his charges as to the FRAUDULENT INTENT OF RESPONDENTS respecting the matters of the Petition for Rehearing and the Stipulation matter respectively that no further statement by Petitioner is desirable.

Petitioner respectfully calls the attention of the Court to statement by John C. Barclay (Petitioner's Exhibit 5, R. 143), formerly Chief Electrical Engineer, as well as Assistant General Manager of The Western Union Telegraph Company, as corroborating the claims of Petitioner to the effect that the patent in suit is PIONEER IN CHARACTER.

Petitioner respectfully represents that the facts of the instant case abundantly show that the action was filed well within the six-year limitation period of the State of New York within which to bring action for fraud, the discovery of the fraud alleged having dated from the 25th day of January, 1937, and the instant suit having been filed on the twentieth day of January, 1943, somewhat less than six years from the time of the discovery of the fraud alleged; and Petitioner verily believes that the facts set forth in the record show that Petitioner has not been guilty of laches; and moreover the facts show that in addition to having given his attorneys an interest of thirty per cent in any recovery he also paid his attorneys one thousand dollars as a first payment for services in cash and divers additional payments in connection with the progress of the litigation aggregating a considerable sum; and Petitioner moreover respectfully points out that Catherine Dixon, who has a large financial interest in the invention (R. 178) has also been defrauded of just rights as a result of the fraud charged against Respondents herein.

As stated in Plaintiff's memorandum annexed to his affidavit dated December 3, 1943:

> "Since the fraud alleged in the re-amended complaint constitutes, assuming it to be the infamous fraud it is alleged to be, namely, a fraud perpetrated not only on the Plaintiff in this case but also a fraud upon the Courts, Plaintiff respectfully submits that such a fraud upon the Courts—defeating, as it does, everything the Courts stand for—makes of COURTS OF JUSTICE the SCAPEGOATS OF INFAMY, and such an infamous fraud upon the Courts constitutes, FIRST OF ALL, A FRAUD UPON THE GREAT AMERICAN PEOPLE."

Conclusion.

It is respectfully submitted that the petition for a writ of certiorari should be granted.

THOMAS BULLITT DIXON,
Petitioner Pro Se.

October 9, 1947